armed with some legal process can take advantage of a failure to comply with the statute, and enforce their lien. *In re N. Y. Economical Printing Co.*, 6 Am. B. R. 615, 110 Fed. Rep. 514, 49 C. C. A. 133. The result of this holding led the court to the conclusion that if only one creditor were armed with some legal process, the trustee could avoid the conditional sale only as to that one, and the vendor could reclaim the property despite the provisions of the Bankr. Act, referred to supra. Quaere: Is not the trustee a creditor armed with some legal process, and so able to avoid the sale as to all the creditors? But see *In re Pekin Plow Co.*, 7 Am. B. R. 369, 112 Fed. Rep. 308, 50 C. C. A. 257, where the court held that the term "creditor using the courts of law and their processes" includes all creditors, and so an unrecorded conditional sale was invalid against all creditors as well as the trustee. Where the vendor could recover chattels for the non-performance of the contract of sale, the assignee must deliver them to the vendor upon his petition. *In re Pusey*, Fed. Cas. 11, 477. But the assignee may pay the balance due from the bankrupt on a conditional sale and get title. *In re Lyon*, Fed. Cas. 8, 644. A lien for the price, retained by the vendor upon a conditional sale of chattels, is good against the assignee in insolvency of the conditional vendee, although the statutory affidavit was not made upon the written memorandum of the lien, as required by statute. *Adams* v. *Lee*, 64 N. H. 421, 13 Atl. 786.

BANKS AND BANKING—USURY LAWS—NOTES PURCHASED IN GOOD FAITH—POWER OF CONGRESS TO REGULATE NATIONAL BANKS.—Two promissory notes executed by the defendant, payable to his own order, and delivered by a blank indorsement to one Muirhead for a usurious consideration, were discounted by a state bank before maturity in due course and for value. In an action on the notes by a receiver of the bank it was *held* (CULLEN, C. J., WERNER and HISCOCK, JJ., dissenting), (1) that usury between the original parties was not available as a defense, and (2) that the National Banking Act, Rev. St. U. S., §§ 5197, 5198, limiting the rate of interest national banks may charge, and providing for a forfeiture of all interest for usury, and superseding all state laws on the subject of usury as applied to such banks, is a valid exercise of the power of Congress. *Schlesinger* v. *Gilhooly* (1907), — N. Y. —, 81 N. E. Rep. 619.

The court reasoned that since Rev. St. U. S., §§ 5197, 5198, limits the rate of interest national banks may charge, and provides that the knowingly charging a greater rate shall forfeit all the interest, and Laws 1870, p. 437, c. 163; Laws 1892, p. 1869, c. 689, § 55, as amended by Laws 1900, p. 668, c. 310, § 1, make similar provision as to state banks, etc., declaring an intent to place them on a parity with national banks as to usury, the conclusion must be reached that as no penalty is imposed for the bona fide purchase by a bank of a note void for usury as between the original parties, and the only penalty is when the bank acts knowingly, usury is not available as a defense against a bank which is an innocent holder in due course of paper which in the hands of private parties would be void for usury in its inception. The theory upon which this decision is based is that the Rev. St. (1st Ed.), pt. 2, p. 772, c. 4, §§ 2, 5 (Laws 1837, p. 486, c. 430, § 1), making void all usurious notes, etc.,

is by necessary implication, in view of the federal statute as construed by the highest federal court, repealed so far as state banks are concerned by the act of the Legislature of 1902, although it may be in full force as to individuals. It is firmly established that the provisons of the National Banking Law, fixing the rate of interest which a national bank may take and determining the penalty to be imposed for taking a larger amount, supersede and are exclusive of the state laws relating to the subject. *Peterborough First Nat. Bank* v. *Childs,* 130 Mass. 519, 39 Am. Rep. 474; *Higley* v. *Beverly First National Bank,* 26 Ohio St. 75, 20 Am. Rep. 759; *Clarion First Nat. Bank* v. *Gruber,* 91 Pa. St. 377; *Wiley* v. *Starbuck,* 44 Ind. 298; *First Nat. Bank* v. *Grimes,* 49 Kan. 219, 30 Pac. 474; *Silva* v. *First Nat. Bank,* 10 Ky. L. Rep. 365; *First Nat. Bank* v. *McEntire,* 112 Ga. 232, 37 S. E. 381; *Farmers' & Mechanics Nat. Bank* v. *Dearing,* 91 U. S. 29, 23 L. ed. 196. While usury is a matter ordinarily within the police power of the state (COOLEY'S PRINCIPLES OF CONSTITUTIONAL LAW, 3rd Ed., p. 260), it is pointed out by the court that when that power is exercised in such a manner as to impede an "essential instrumentality in the prosecution of the fiscal operations of government * * * it must give way to the supreme power of the nation." *Easton* v. *Iowa,* 188 U. S. 220, 23 S. Ct. 288, 47 L. ed. 452.

BILLS AND NOTES—EXECUTION IN BLANK—STATUTORY PROVISIONS.—The defendants, with one Pothoven, who was a partner of one of them in a mercantile business, affixed their signatures as joint makers to the blank printed form of a promissory note, which was wrongfully filled out for a larger amount than authorized and delivered by Pothoven to the plaintiff, whom he named as payee, in satisfaction of his own personal account, instead of using it as authorized in the partnership business. The note was received by the plaintiff in good faith without notice that Pothoven had exceeded his authority. *Held,* that as the payee was not a "holder in due course" he could not recover. *Vander Ploeg* v. *Van Zuuk et al.* (1907), — Ia. —, 112 N. W. Rep. 807.

The negotiable instruments act (Acts 29th, Gen. Assem., p. 81, c. 130; Code Supp. 1902, § 3060a), Sec. 14, provides that, where an instrument is signed by a party in blank and delivered to another to be filled in and delivered to the payee, in order that it may be enforced when completed against any person who became a party thereto prior to its completion, it must be filled in strictly in accordance with the authority given, unless, after completion, "it is negotiated to a holder in due course," who may enforce it as if filled in strictly in accordance with the authority given. By § 52 of the same act a "holder in due course" is defined to be one who takes an instrument complete and regular, before maturity, "without notice that at the time it was negotiated to him there was any infirmity or defect in the title of the person negotiating it." The term "holder" is defined in § 191 as meaning "the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof." From the above the conclusion was reached that the payee was a "holder" of the note but not a "holder in due course," since the latter term, in the language of the court, "seems unquestionably to be used to indi-